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17 UNITED STATES DISTRICT COURT
18 FOR THE CENTRAL DISTRICT OF CALIFORNIA

19 ISAGANI DE LA PENA,) No. CV 07-7150-R (AGR)
20 Petitioner.)
21 v.) GOVERNMENT'S MOTION TO DISMISS
22 S. A. HOLENCIK,) PETITION FOR WRIT OF HABEAS
23 Respondent.) CORPUS PURSUANT TO 28 U.S.C.
24) § 2241; DECLARATION OF ERIC D.
25) VANDEVELDE; EXHIBITS
26)
27)
28)

19 Respondent, S. A. Holencik, through his attorney of record,
20 the United States Attorney for the Central District of
21 California, hereby respectfully moves to dismiss petitioner's
22 petition for writ of habeas corpus under 28 U.S.C. § 2241. This
23 motion is based upon the attached memorandum of points and
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27 //
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1 authorities, the records and file in this case, the accompanying
2 Declaration of Eric D. Vandevelde and exhibits attached thereto,
3 and such other evidence as may be presented to this Court.

4 | Dated: January 16, 2008 Respectfully submitted,

5 THOMAS P. O'BRIEN
6 United States Attorney

10 /s/
11 ERIC D. VANDEVELDE
Assistant United States Attorney

Attorneys for Respondent
S. A. Holencik

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

In May 2001, a jury sitting in the District of Guam convicted petitioner Isagani De La Pena ("petitioner") on all counts of a six-count indictment. The court sentenced petitioner to six concurrent terms of imprisonment, three of which were 365 months in length. Petitioner appealed directly and later filed a motion under 28 U.S.C. § 2255 in the District of Guam. Neither were successful.

Now incarcerated in the Central District of California, petitioner filed the instant petition for a writ of habeas corpus under 28 U.S.C. § 2241 ("Petition"), wherein he attacks the legality of two counts of conviction -- i.e., distribution of methamphetamine and possession of a firearm by a felon. First, he contends that these offenses are lesser included offenses of two other counts of conviction -- i.e., distribution of methamphetamine near a school and possession of a firearm by an unlawful drug user. Second, he contends that he was denied the effective assistance of counsel due to counsel's failure to object to any conviction on a lesser included offense.

21 The instant Petition should be dismissed for lack of
22 jurisdiction. Petitioner challenges the validity of his
23 convictions and sentence, not the manner in which his sentence is
24 being executed. These claims are not properly before this Court
25 on a motion under § 2241; rather, they must be raised on a motion
26 under § 2255. And the law is clear that the proper venue for a
27 § 2255 motion lies not in the district of incarceration (i.e.,
28 this district), but rather the district in which petitioner was

1 convicted and sentenced (i.e., the District of Guam). Moreover,
2 while the "savings clause" of § 2255 permits federal prisoners to
3 resort to § 2241 in the district of incarceration if it "appears
4 that the remedy by motion [under § 2255] is inadequate or
5 ineffective to test the legality of [their] detention,"
6 petitioner cannot show that the savings clause applies here. He
7 is not "actually innocent" of any lesser included offense; nor
8 can he claim never to have had an "unobstructed procedural shot"
9 to challenge his conviction on such an offense.

10 Accordingly, this Court should dismiss the Petition for lack
11 of jurisdiction.

12 **II. STATEMENT OF FACTS AND PROCEDURAL HISTORY**

13 **A. Conviction in the District of Guam**

14 On November 1, 2000, petitioner was charged by indictment
15 with the following six counts:

- 16 (1) conspiracy to distribute methamphetamine, in violation
17 of 21 U.S.C. §§ 846, 841(a)(1);
- 18 (2) distribution of methamphetamine, in violation of 21
19 U.S.C. § 841(a)(1);
- 20 (3) distribution of methamphetamine near a school, in
21 violation of 21 U.S.C. § 860;
- 22 (4) unlawful use of a communication facility to facilitate
23 a drug crime, in violation of 21 U.S.C. § 843(b);
- 24 (5) possession of a firearm by a felon, in violation of 18
25 U.S.C. § 922(g)(1); and
- 26 (6) possession of a firearm by an unlawful drug user, in
27 violation of 18 U.S.C. § 922(g)(3).

28 See Decl. of Eric D. Vandevelde, Ex. A (criminal docket from

1 United States v. De La Pena, No. CR 00-126 (D. Guam)) at Docket
2 Item No. 1.

3 On May 7, 2001, after a seven day jury trial, a jury
4 convicted petitioner on all counts. See Id. at Docket Item No.
5 97.

6 On October 9, 2001, petitioner was sentenced to 365 months
7 imprisonment for each of Counts 1-3, 48 months imprisonment for
8 Count 4, and 120 months imprisonment for each of Counts 5-6. See
9 Id. at 2 & Docket Item No. 114. All terms of imprisonment were
10 ordered to run concurrently.

11 **B. Direct Appeal**

12 On November 7, 2001, petitioner filed a notice of appeal.
13 Id. at Docket Item No. 119. Petitioner challenged the
14 introduction at trial of expert urinalysis testimony, as well as
15 physical evidence obtained from searches of petitioner's house
16 and car. United States v. De La Pena, 62 Fed. Appx. 754, 755-56
17 (9th Cir. 2003) (unpublished). He also argued that the
18 prosecution had failed to present sufficient evidence to support
19 a conviction on the conspiracy charge, that his sentence was
20 unconstitutional under Apprendi v. New Jersey, 530 U.S. 466
21 (2000), and that the district court should have declared a
22 mistrial. De La Pena, 62 Fed. Appx. at 756-57. On February 26,
23 2003, the Ninth Circuit affirmed defendant's convictions and
24 sentence in all respects. Id. at 755-57.

25 **C. Post-Appeal Collateral Attacks**

26 On January 23, 2004, petitioner filed in the District of
27 Guam a motion under 28 U.S.C. § 2255 to vacate, set aside, or
28 correct his sentence. See Decl. of Eric D. Vandevelde, Ex. A at

1 Docket Item No. 138. According to the form accompanying the
2 instant Petition, petitioner states that this first § 2255 motion
3 alleged violations of the Speedy Trial Act as well as
4 petitioner's Fifth Amendment privilege against self-
5 incrimination. On July 7, 2005, the district court denied
6 petitioner's motion. Id. at Docket Item No. 147.

7 On August 15, 2005, petitioner filed a notice of appeal and
8 motion for certificate of appealability regarding the denial of
9 his § 2255 motion. See Id. at Docket Item No. 148. On March 23,
10 2006, petitioner filed a motion for "Accelerated Adjudication" of
11 his earlier motion for certificate of appealability. See Id. at
12 Docket Item No. 150. On March 31, 2006, the district court
13 denied both motions. See Id. at Docket Item No. 152; see also
14 United States v. De La Pena, No. CR 00-00126, 2006 WL 860719 (D.
15 Guam Mar. 31, 2006). On October 10, 2006, the Ninth Circuit also
16 denied petitioner's request for a certificate of appealability.
17 See Decl. of Eric D. Vandevelde, Ex. A at Docket Item No. 155.

18 **D. Instant Petition**

19 On October 31, 2007, petitioner filed the instant Petition
20 under 28 U.S.C. § 2241 in the Central District of California.
21 Petitioner presents essentially one argument -- that he was
22 improperly convicted of two lesser included offenses.
23 Specifically, he contends that:

24 1) Count 2, distribution of methamphetamine (21 U.S.C. §
25 841(a)(1)), is a lesser included offense of Count 3,
26 distribution of methamphetamine near a school (21
27 U.S.C. § 860);

28 //

1 2) Count 5, possession of a firearm by a felon (18 U.S.C.
2 § 922(g)(1)), is a lesser included offense of Count 6,
3 possession of a firearm by an unlawful drug user (18
4 U.S.C. § 922(g)(3)); and
5 3) competent counsel would have objected to any conviction
6 on a lesser included offense.

7 **III. ARGUMENT**

8 **A. The Petition Must Be Dismissed Because It Attacks**
9 **Petitioner's Conviction and Sentence, And § 2255 Is The**
10 **Proper Vehicle For Such Attacks.**

11 Petitioner seeks to challenge not the manner in which his
12 sentence is being executed, but rather the validity of his
13 convictions and sentence.

14 It is well settled that a motion under § 2255 is the primary
15 avenue for federal prisoners to attack their sentences and
16 underlying convictions:

17 An application for a writ of habeas corpus [under 28
18 U.S.C. § 2241] in [sic] behalf of a prisoner who is
19 authorized to apply for relief by motion pursuant to
20 this section, shall not be entertained if it appears
21 that the applicant has failed to apply for relief, by
22 motion, to the court which sentenced him, or that such
23 court has denied him relief

24 28 U.S.C. § 2255 ¶ 5 (emphasis added); see also Ivy v. Pontesso,
25 328 F.3d 1057, 1059 (9th Cir. 2003); Lorentsen v. Hood, 223 F.3d
26 950, 953 (9th Cir. 2000) ("In general, § 2255 provides the
27 exclusive procedural mechanism by which a federal prisoner may
28 test the legality of detention.")

1 A habeas petition under § 2241, by contrast, is designed to
2 "challenge the manner, location, or conditions of a sentence's
3 execution" Hernandez v. Campbell, 204 F.3d 861, 864 (9th
4 Cir. 2000) (per curiam). Here, petitioner is challenging the
5 validity of his convictions and sentence. Thus, his Petition is
6 properly construed as a motion filed pursuant to 28 U.S.C.
7 § 2255.

8 A motion under § 2255, however, must be brought before the
9 court in the sentencing district. Hernandez, 204 F.3d at 865.
10 Because petitioner was convicted and sentenced in the District of
11 Guam, his Petition is not properly before the Central District of
12 California and therefore should be dismissed for lack of
13 jurisdiction.

16 While petitions filed under § 2241 are generally not proper
17 to challenge a conviction or sentence, Congress has recognized
18 that there could be some rare instances in which it would be
19 appropriate to allow a district court to exercise its residual
20 power under § 2241 to hear claims of federal prisoners
21 challenging their convictions or sentences. Accordingly,
22 Congress built into § 2255 a "savings clause" that permits
23 federal prisoners to resort to § 2241 if it "appears that the
24 remedy by motion [under § 2255] is inadequate or ineffective to
25 test the legality of [their] detention." 28 U.S.C. § 2255 ¶ 5;
26 see also United States v. Hayman, 342 U.S. 205, 219 (1952)
27 (affirming the validity of the "savings clause"). The savings
28 clause, however, is to be construed narrowly. See United States

1 v. Pirro, 104 F.3d 297, 299 (9th Cir. 1997). The burden is on
2 the petitioner to show that the remedy under § 2255 is
3 "inadequate or ineffective." See Redfield v. United States, 315
4 F.2d 76, 83 (9th Cir. 1963).

5 Thus, when a federal inmate files a petition that is labeled
6 as being brought pursuant to § 2241, but that actually seeks to
7 attack the legality of his conviction or sentence, the district
8 court must first determine whether it has jurisdiction to
9 entertain the petition by conducting an inquiry into whether the
10 petition falls within the savings clause or whether it properly
11 should be construed as a § 2255 motion. Hernandez, 204 F.3d at
12 865.

13 In construing an inmate's filing, a district court is not
14 bound by the label given the petition and must look instead to
15 its substance. See Porter v. Adams, 244 F.3d 1006, 1007 (9th
16 Cir. 2001) (examining gravamen of defendant's claims to determine
17 whether they should have been brought pursuant to § 2241 or
18 § 2255). The Ninth Circuit has explained that § 2255's savings
19 clause has been reserved for the rare case in which (1) a
20 defendant lacks an "unobstructed procedural shot" to present a
21 claim that (2) he is "actually innocent" of the convicted
22 offense. See Ivy, 328 F.3d at 1059-61 (emphasis added);
23 Lorentsen, 223 F.3d at 954.

24 Here, petitioner already had the opportunity to challenge
25 his convictions and sentence on the grounds identified in the
26 instant Petition. Moreover, even assuming he never had that
27 opportunity, petitioner's challenge is not that he is actually
28 //

1 innocent of any of the counts of conviction. Thus, the savings
2 clause does not apply.

3 **1. Petitioner Had The Opportunity To Challenge**
4 **His Convictions Of Any Lesser Included**
5 **Offenses**

6 Petitioner claims that, at the time he filed his first
7 § 2255 motion (January 2004), he could not have challenged his
8 conviction for distribution of methamphetamine as a lesser
9 included offense of distribution of methamphetamine near a
10 school. He contends that such a challenge became possible only
11 after the District of Rhode Island decision in United States v.
12 Perry, 389 F.Supp.2d 278 (2005) (holding that 21 U.S.C. § 860
13 includes the lesser offense of 21 U.S.C. § 841(a)(1)).

14 Petitioner's contention that he never had an "unobstructed
15 procedural shot" to make this argument is not true. Indeed, in
16 addition to citing Perry, petitioner goes on to cite earlier
17 Ninth Circuit authority for the same proposition. Specifically,
18 he cites United States v. Kakatin, 214 F.3d 1049, 1051 (9th Cir.
19 2000) (likewise holding that § 860 includes the lesser offense of
20 § 841(a)(1)). Kakatin was decided **before** petitioner filed his
21 first § 2255 motion, and indeed, **before** defendant was even
22 indicted. Thus, petitioner did have an "unobstructed procedural
23 shot" to challenge his conviction on any lesser included
24 offense.^{1/}

25
26 ^{1/} Petitioner cites no authority holding that Count 5,
27 possession of a firearm by a felon (18 U.S.C. § 922(g)(1)), is a
28 lesser included offense of Count 6, possession of a firearm by an
unlawful drug user (18 U.S.C. § 922(g)(3)). While separate
convictions under different subsections of § 922(g) for the same
conduct are improper, the case law so holding likewise pre-dates

1 2. **Petitioner Does Not Claim "Actual Innocence."**

2 To fall within § 2255's savings clause, petitioner's claim
3 must be one that he is actually innocent of the convicted
4 offense. See Ivy, 328 F.3d at 1059-61 (emphasis added);
5 Lorentsen, 223 F.3d at 954; see also Charles v. Chandler, 180
6 F.3d 753, 757 (6th Cir. 1999) (per curiam) ("No circuit court has
7 to date permitted a post-AEDPA petitioner who was not effectively
8 making a claim of 'actual innocence' to utilize § 2241 (via
9 § 2255's 'savings clause') as a way of circumventing § 2255's
10 restriction on the filing of second or successive habeas
11 petitions."). A habeas petitioner bears the burden of
12 demonstrating his "actual innocence" by a preponderance of the
13 evidence. Lorentsen, 223 F.3d at 954.

14 Here, petitioner does not argue that he is "actually
15 innocent" of any lesser included offense for which he was
16 convicted. "'[A]ctual innocence' means **factual innocence**, not
17 mere legal insufficiency," Bousley v. United States, 523 U.S.
18 614, 623 (1998) (emphasis added), and petitioner does not
19 identify any evidence to show he is factually innocent of his
20 conviction for distribution of methamphetamine. Rather, his sole
21 argument, a legal one, is that he is "legally innocent" of any
22 lesser included offense. Petition at 4. Such a claim, however,
23 is not one of actual innocence. Thus, for example, although
24

25 defendant's convictions. See, e.g., United States v. Shea, 211
26 F.3d 658, 673 (1st Cir. 2000); United States v. Dunford, 148 F.3d
27 385, 389 (4th Cir. 1998); United States v. Winchester, 916 F.2d
28 601, 606 (11th Cir. 1990); United States v. Munoz-Romo, 989 F.2d
757, 759 (5th Cir. 1993); United States v. Johnson, 130 F.3d
1420, 1426 (10th Cir. 1997). Thus, defendant already had a
procedural shot to present such a claim.

1 § 841(a)(1) may be, in fact, a lesser included offense of § 860,
2 petitioner does not argue that he did not commit that offense or
3 that that offense is no longer a crime. See Poindexter v. Nash,
4 333 F.3d 372, 381-382 (2d Cir. 2003); see also Wofford v. Scott,
5 177 F.3d 1236, 1244 (11th Cir. 1999).

6 As such, petitioner has failed to show that his Petition
7 falls within the savings clause of § 2255.

8 | IV. CONCLUSION

9 For the reasons noted above, the Petition should be
10 dismissed in its entirety for lack of jurisdiction.^{2/} If this
11 Court denies the government's motion to dismiss, the government
12 respectfully requests that the Court permit the government to
13 submit further briefing on the merits of petitioner's claims.

14 | Dated: January 16, 2008 Respectfully submitted,

THOMAS P. O'BRIEN
United States Attorney

CHRISTINE C. EWELL
Assistant United States Attorney
Chief, Criminal Division

/s/
ERIC D. VANDEVELDE
Assistant United States Attorney

27 ^{2/} If Petitioner seeks to pursue this Petition in the
28 District of Guam, he will first need to obtain a certificate of
appealability. See Fed. R. App. P. 22(b).

DECLARATION OF ERIC D. VANDEVELDE

I, ERIC D. VANDEVELDE, declare as follows:

3 1. I have personal knowledge of the following facts. If
4 called and sworn as a witness, I could and would competently
5 testify to these facts.

6 2. I am an Assistant United States Attorney in the United
7 States Attorney's Office for the Central District of California. I
8 have been designated as counsel in the matter entitled Isagani De
9 Le Pena v. S. A. Holencik, No. CV 07-7150-R (AGR). This
10 declaration is made in support of the government's motion to
11 dismiss.

12 3. Attached hereto as Exhibit A is a true and correct copy
13 of the criminal docket, as of January 9, 2008, in United States v.
14 De La Pena, No. CR 00-126, from the District of Guam.

15 I declare under penalty of perjury under the laws of the
16 United States that the foregoing is true and correct. Executed at
17 Los Angeles, California, on January 16, 2008.



ERIC D. VANDEVELDE
Assistant United States Attorney

Exhibit A

CLOSED

Civil/Criminal CM/ECF System
District Court of Guam (Hagatna)
CRIMINAL DOCKET FOR CASE #: 1:00-cr-00126 All Defendants

Case title: USA v. Dela Pena

Date Filed: 11/01/2000
Date Terminated: 10/22/2001

Assigned to: John S. Unpingco

Defendant**Isagani P. Dela Pena, JR. (1)***TERMINATED: 10/22/2001**also known as*

Gani (1)

*TERMINATED: 10/22/2001**also known as*

Egan (1)

*TERMINATED: 10/22/2001*represented by **Curtis Charles Van de veld**
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Pending Counts

CONSPIRACY TO DISTRIBUTE
METHAMPHETAMINE HYDROCHLORIDE
(1)

Disposition

Defendant shall serve a term of 365 months for Counts 1, 2, and 3. For Count 4, defendant shall serve a term of 48 months and for Counts 5 and 6, the defendant shall serve a term of 120 months. All these terms of imprisonment are to be served concurrently.

DISTRIBUTION OF METHAMPHETAMINE
HYDROCHLORIDE
(2)

Defendant shall serve a term of 365 months for Counts 1, 2, and 3. For Count 4, defendant shall serve a term of 48 months and for Counts 5 and 6, the defendant shall serve a term of 120 months. All these terms of imprisonment are to be served concurrently.

DISTRIBUTION OF METHAMPHETAMINE
HYDROCHLORIDE NEAR A
PLAYGROUND
(3)

Defendant shall serve a term of 365 months for Counts 1, 2, and 3. For Count 4, defendant shall serve a term of 48 months and for Counts 5 and 6, the defendant shall serve a term of 120 months. All these terms of imprisonment are to be served concurrently.

UNLAWFUL USE OF COMMUNICATION
FACILITY TO FACILITATE DRUG CRIME
(4)

Defendant shall serve a term of 365 months for Counts 1, 2, and 3. For Count 4, defendant shall serve a term of 48 months and for Counts 5 and 6, the defendant shall serve a term of 120 months. All these terms of imprisonment are to be served concurrently.

POSSESSION OF A FIREARM BY A FELON
(5)

Defendant shall serve a term of 365 months for Counts 1, 2, and 3. For Count 4, defendant shall serve a term of 48 months and for Counts 5 and 6, the defendant shall serve a term of 120 months. All these terms of imprisonment are to be served concurrently.

POSSESSION OF A FIREARM BY AN
UNLAWFUL DRUG USER
(6)

Defendant shall serve a term of 365 months for Counts 1, 2, and 3. For Count 4, defendant shall serve a term of 48 months and for Counts 5 and 6, the defendant shall serve a term of 120

months. All these terms of imprisonment are to be served concurrently.

Highest Offense Level (Opening)

Felony

Terminated Counts

None

Disposition

Highest Offense Level (Terminated)

None

Complaints

None

Disposition

Plaintiff

USA

represented by **Marivic P. David**

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Date Filed	#	Docket Text
11/01/2000	1	INDICTMENT - Summons issd & hrg set for 11/09/00 at 9:30 a.m.; [RMM EOD 11/02/2000] (ORIGINAL GCMS ENTRY 1-1) (cnv) (Entered: 11/01/2000)
11/03/2000	2	APPLICATION & Ord to Seal Rec; [RMM EOD 11/06/2000] (ORIGINAL GCMS ENTRY 2-1) (cnv) (Entered: 11/03/2000)
11/09/2000	3	MINUTE ENTRY - Initial Appearance/Arraignment - DFT enters plea of Not Guilty. Trial set for 01/11/01 - 9:30 a.m. DFT remanded to custody of U.S. Marshals; [MBA EOD 11/13/2000] (ORIGINAL GCMS ENTRY 3-1) (cnv) (Entered: 11/09/2000)
11/13/2000	4	ORDER - Jehan'ad Martinez apptd to rep t/DFT; [MBA EOD 11/13/2000] (ORIGINAL GCMS ENTRY 4-1) (cnv) (Entered: 11/13/2000)
11/13/2000	5	ORDER - Trial set for 01/11/01 - 9:30 a.m. P/T mtgs due NLT 11/30/00 & hrds on 12/21/00 - 1:30 p.m. Trial docs due NLT 01/04/01; [MBA EOD 11/13/2000] (ORIGINAL GCMS ENTRY 5-1) (cnv) (Entered: 11/13/2000)
11/17/2000	6	RETURN Of Summons In A Crim Case - exec 11/09/00; [RSN EOD 11/17/2000] (ORIGINAL GCMS ENTRY 6-1) (cnv) (Entered: 11/17/2000)
11/20/2000	7	SUBSTITUTION of Cnsl & Ord - Gerald E. Gray retained as cnsl of rec for DFT; [MBA EOD 11/20/2000] (ORIGINAL GCMS ENTRY 7-1) (cnv) (Entered: 11/20/2000)
11/30/2000	8	NOTICE of Mtn and; [MBA EOD 12/01/2000] (ORIGINAL GCMS ENTRY 8-1) (cnv) (Entered: 11/30/2000)

11/30/2000	10	NOTICE of Mtn and; [MBA EOD 12/01/2000] (ORIGINAL GCMS ENTRY 9-1) (cnv) (Entered: 11/30/2000)
11/30/2000	12	NOTICE of Mtn and; [MBA EOD 12/01/2000] (ORIGINAL GCMS ENTRY 10-1) (cnv) (Entered: 11/30/2000)
11/30/2000	14	NOTICE of Mtn and; [MBA EOD 12/01/2000] (ORIGINAL GCMS ENTRY 11-1) (cnv) (Entered: 11/30/2000)
11/30/2000	16	AFFIDAVIT in Supt of Mtn for Return of Property ; [MBA EOD 12/01/2000] (ORIGINAL GCMS ENTRY 12-1) (cnv) (Entered: 11/30/2000)
12/01/2000	9	MOTION for Discovery & Inspection - Hrg set for 12/21/00 - 1:30 p.m.; [MBA EOD 12/01/2000] (ORIGINAL GCMS ENTRY 8-2) (cnv) (Entered: 12/01/2000)
12/01/2000	11	MOTION for Statement of Govt's Intention to Use Evidence - Hrg set for 12/21/00 - 1:30 p.m.; [MBA EOD 12/01/2000] (ORIGINAL GCMS ENTRY 9-2) (cnv) (Entered: 12/01/2000)
12/01/2000	13	MOTION to Suppress - Hrg set for 12/21/00 - 1:30 p.m.; [MBA EOD 12/01/2000] (ORIGINAL GCMS ENTRY 10-2) (cnv) (Entered: 12/01/2000)
12/01/2000	15	MOTION for Return of Property - Hrg set for 12/21/00 - 1:30 p.m.; [MBA EOD 12/01/2000] (ORIGINAL GCMS ENTRY 11-2) (cnv) (Entered: 12/01/2000)
12/04/2000	17	NOTICE of Mtn; [MBA EOD 12/06/2000] (ORIGINAL GCMS ENTRY 13-1) (cnv) (Entered: 12/04/2000)
12/04/2000	18	MOTION for P/T Conf -; [MBA EOD 12/06/2000] (ORIGINAL GCMS ENTRY 13-2) (cnv) (Entered: 12/04/2000)
12/14/2000	19	STIPULATED Reqt for Cont of Mtns Hrg Date; [MBA EOD 12/14/2000] (ORIGINAL GCMS ENTRY 14-1) (cnv) (Entered: 12/14/2000)
12/18/2000	20	ORDER re rescheduling of p/t mtns hrg date. Mtns hrg resched to 01/19/01 - 1:30 p.m.; [MBA EOD 12/19/2000] (ORIGINAL GCMS ENTRY 15-1) (cnv) (Entered: 12/18/2000)
12/20/2000	21	SUPERSEDING Indict - Sumns issd. Hrg set for 12/22/00 - 10:00 a.m.; [MBA EOD 12/20/2000] (ORIGINAL GCMS ENTRY 16-1) (cnv) (Entered: 12/20/2000)
12/22/2000	22	MINUTE ENTRY - Initial Appearance re Superseding Indictment - DFT enters plea of Not Guilty. Trial set for 01/11/01 - 9:30 a.m. DFT remanded to custody of U.S. Marshals; [MBA EOD 12/26/2000] (ORIGINAL GCMS ENTRY 17-1) (cnv) (Entered: 12/22/2000)
12/27/2000	23	STIPULATION for continuance of trial and order. Trial is now set for 2/8/01 at 9:30 a.m. ; Filed by: DFT Sealed [PTC EOD 01/03/2001] (ORIGINAL GCMS ENTRY 18-1) (cnv) (Entered: 12/27/2000)
01/17/2001	24	GOVERNMENT'S Response to DFT's Mtn to Suppress; [MBA EOD 01/18/2001] (ORIGINAL GCMS ENTRY 19-1) (cnv) (Entered: 01/17/2001)
01/17/2001	25	GOVERNMENT'S Response to DFT's Mtns for Discovery & Inspection; & for Statement of Govt's Intention to Use Evidence; [MBA EOD 01/18/2001] (ORIGINAL GCMS ENTRY 20-1) (cnv) (Entered: 01/17/2001)
01/17/2001	26	GOVERNMENT'S Response to DFT's Mtn for Return of Property; [MBA EOD 01/18/2001] (ORIGINAL GCMS ENTRY 21-1) (cnv) (Entered: 01/17/2001)
01/19/2001	27	STIPULATION for Cont of Mtn for Discovery & Inspection; Mtn for Statement of Govt's Intention to Use Evidence; Mtn to Suppress; and Mtn for Return of Property; & Ord - Mtns reset to 02/01/01 - 2:00 p.m. ; [MBA EOD 01/19/2001] (ORIGINAL GCMS ENTRY 22-1) (cnv) (Entered: 01/19/2001)

01/26/2001	28	RETURN of Sumns in a Cr Cs - Exec 12/21/00; [MBA EOD 01/26/2001] (ORIGINAL GCMS ENTRY 23-1) (cnv) (Entered: 01/26/2001)
01/31/2001	29	STIPULATION to Ext Deadline for Flg Pre-Trial Mot & Mot Hrg; and to Cont Pending Mot for Disc & Inspection; Mot for Statement of Govt's Intention to Use Evidence; Mot to Suppress; and Mot for Ret of Property; & Ord. Pretrial mot ext to 02/16/01. Pretrial mot reset to Thurs, 02/22/01 at 3:30 p.m.; [RSN EOD 02/01/2001] (ORIGINAL GCMS ENTRY 24-1) (cnv) (Entered: 01/31/2001)
01/31/2001	30	STIPULATION for Cont of Trial & Ord. Trial set for 02/08/01 cont'd to 03/08/01 at 9:30 a.m.; [RSN EOD 02/01/2001] (ORIGINAL GCMS ENTRY 25-1) (cnv) (Entered: 01/31/2001)
01/31/2001	31	SUPERSEDING Indict. Sumns issd. Hrg set for 02/05/01 at 1:30 p.m.; [RSN EOD 02/01/2001] (ORIGINAL GCMS ENTRY 26-1) (cnv) (Entered: 01/31/2001)
02/05/2001	32	MINUTE ENTRY - Arraignment - DFT enters plea of Not Guilty on Superseding Indict. Trial set for 03/08/01 - 9:30 a.m. Cs unsealed. DFT remanded to custody of U.S. Marshals; [MBA EOD 02/06/2001] (ORIGINAL GCMS ENTRY 27-1) (cnv) (Entered: 02/05/2001)
02/06/2001	33	MOTION & Ord to Unseal Rec; [MBA EOD 02/06/2001] (ORIGINAL GCMS ENTRY 28-1) (cnv) (Entered: 02/06/2001)
02/14/2001	34	RETURN of sumns in a Cr Cs - Exec 02/05/01; [MBA EOD 02/15/2001] (ORIGINAL GCMS ENTRY 29-1) (cnv) (Entered: 02/14/2001)
02/20/2001	35	MOTION To Withdraw ; [LRH EOD 02/21/2001] (ORIGINAL GCMS ENTRY 30-1) (cnv) (Entered: 02/20/2001)
02/22/2001	36	MINUTE ENTRY - Motion for Return of Property, Motion for Discovery & Inspection, Motion for Statement of Govt's Intention to Use Evidence, Motion to Suppress - Mtns argued by Gov't & DFT. Mtn for Ret of Prop - DENIED. Mtn to Suppress - DENIED. Mtn for Disc & Insp - WITHDRAWN. Mtn for Stmtnt of Govt's Intention to Use Evidence - WITHDRAWN. DFT rem to t/cust of USMS; [LRH EOD 02/23/2001] (ORIGINAL GCMS ENTRY 31-1) (cnv) (Entered: 02/22/2001)
02/26/2001	37	ORDER - Jehan'Ad G. Martinez apptd to rep t/DFT nunc pro tunc to 11/07/00; [LRH EOD 02/26/2001] (ORIGINAL GCMS ENTRY 32-1) (cnv) (Entered: 02/26/2001)
02/27/2001	38	GOVERNMENT'S Req for Use of Ct's Equip & Ord; [LRH EOD 02/27/2001] (ORIGINAL GCMS ENTRY 33-1) (cnv) (Entered: 02/27/2001)
02/28/2001	39	ORDER - Gerald E. Gray, is hereby granted lv to withdraw as cnsl for DFT. Curtis Van de Veld is hereby apptd to rep t/DFT; [MBA EOD 02/28/2001] (ORIGINAL GCMS ENTRY 34-1) (cnv) (Entered: 02/28/2001)
03/05/2001	40	MOTION to Withdraw as Cnsl; [LRH EOD 03/05/2001] (ORIGINAL GCMS ENTRY 35-1) (cnv) (Entered: 03/05/2001)
03/05/2001	41	DECLARATION in Support of Mtn to Withdraw as Cnsl; [LRH EOD 03/05/2001] (ORIGINAL GCMS ENTRY 36-1) (cnv) (Entered: 03/05/2001)
03/06/2001	42	ORDER Approving Withdrawal & Appt of Cnsl - William C. Bischoff appt to rep t/DFT; [LRH EOD 03/06/2001] (ORIGINAL GCMS ENTRY 37-1) (cnv) (Entered: 03/06/2001)
03/07/2001	43	MOTION to Cont Trial Date; Ord - Trial cont to 04/09/01 - 9:30 a.m.; [LRH EOD 03/07/2001] (ORIGINAL GCMS ENTRY 38-1) (cnv) (Entered: 03/07/2001)
03/14/2001	44	MOTION to Withdraw as Cnsl; Ord - Jehan'ad G. Martinez apptd to rep t/DFT; [LRH EOD 03/14/2001] (ORIGINAL GCMS ENTRY 39-1) (cnv) (Entered: 03/14/2001)
04/02/2001	45	UNITED States' Proposed Voir Dire Questions; [LRH EOD 04/03/2001] (ORIGINAL

		GCMS ENTRY 40-1) (cnv) (Entered: 04/02/2001)
04/02/2001	46	UNITED States' Proposed Jry Instructions; [LRH EOD 04/03/2001] (ORIGINAL GCMS ENTRY 41-1) (cnv) (Entered: 04/02/2001)
04/02/2001	47	UNITED States' Exh List; [LRH EOD 04/03/2001] (ORIGINAL GCMS ENTRY 42-1) (cnv) (Entered: 04/02/2001)
04/02/2001	48	WITNESS List; [LRH EOD 04/03/2001] (ORIGINAL GCMS ENTRY 43-1) (cnv) (Entered: 04/02/2001)
04/02/2001	49	UNITED States' Proposed Verdict Form; [LRH EOD 04/03/2001] (ORIGINAL GCMS ENTRY 44-1) (cnv) (Entered: 04/02/2001)
04/03/2001	50	ORDER - P/T conf set for 04/05/01 - 1:30 p.m.; [MBA EOD 04/03/2001] (ORIGINAL GCMS ENTRY 45-1) (cnv) (Entered: 04/03/2001)
04/03/2001	51	GOVERNMENT'S In Limine Mtn to Resolve Before Trial Certain Issues Re to Tape Recordings, Its Translations, & Transc of Recordings; & Proposed Ord; [MBA EOD 04/03/2001] (ORIGINAL GCMS ENTRY 46-1) (cnv) (Entered: 04/03/2001)
04/03/2001	52	DEFENDANT'S Proposed Jry Instructions; Cert of Svcs; [LRH EOD 04/03/2001] (ORIGINAL GCMS ENTRY 47-1) (cnv) (Entered: 04/03/2001)
04/03/2001	53	DEFENDANT'S Exh List; Cert of Svcs; [MBA EOD 04/03/2001] (ORIGINAL GCMS ENTRY 48-1) (cnv) (Entered: 04/03/2001)
04/03/2001	54	AMENDED DFT's Exhs List; Cert of Svcs; [MBA EOD 04/03/2001] (ORIGINAL GCMS ENTRY 49-1) (cnv) (Entered: 04/03/2001)
04/04/2001	55	UNITED States' Mtn to Rel GJ Transc; [LRH EOD 04/04/2001] (ORIGINAL GCMS ENTRY 50-1) (cnv) (Entered: 04/04/2001)
04/04/2001	56	ORDER Rel GJ Transc; [LRH EOD 04/04/2001] (ORIGINAL GCMS ENTRY 51-1) (cnv) (Entered: 04/04/2001)
04/04/2001	57	GOVERNMENT'S Req for use of Crt's Equip; & Ord; [LRH EOD 04/04/2001] (ORIGINAL GCMS ENTRY 52-1) (cnv) (Entered: 04/04/2001)
04/05/2001	58	MINUTE ENTRY - Pretrial Conference - Ct & cnsl go over possibilities of stips. Opening stmts - 40 mins. ea side/2 alt jurors/2 alt jurors to be identified; [MBA EOD 04/06/2001] (ORIGINAL GCMS ENTRY 53-1) (cnv) (Entered: 04/05/2001)
04/06/2001	59	DEFENDANT'S Proposed Transcriptions of t/Govt's Exh Nos. 1, 3, 5, 7, 9, 11, 13 & 74; [MBA EOD 04/06/2001] (ORIGINAL GCMS ENTRY 54-1) (cnv) (Entered: 04/06/2001)
04/06/2001	60	UNITED States Subm Jencks Materials; [MBA EOD 04/06/2001] (ORIGINAL GCMS ENTRY 55-1) (cnv) (Entered: 04/06/2001)
04/06/2001	61	AMENDED Witness List; [MBA EOD 04/06/2001] (ORIGINAL GCMS ENTRY 56-1) (cnv) (Entered: 04/06/2001)
04/06/2001	62	UNITED States' Amd Exh List; [MBA EOD 04/06/2001] (ORIGINAL GCMS ENTRY 57-1) (cnv) (Entered: 04/06/2001)
04/06/2001	63	ORDER TO SHOW CAUSE - Def cnsl is ORD to show cause why he should not be sanctioned or held in contempt for failing to abide by this Ct's 04/05/01 ord. A hrg on OSC shall be held 04/09/01 at 8:00 a.m.; [MBA EOD 04/06/2001] (ORIGINAL GCMS ENTRY 58-1) (cnv) (Entered: 04/06/2001)
04/09/2001	64	MINUTE ENTRY - Order to Show Cause - Crt gives Mr. Austin an oral warning P/T cont'd to 04/24/01 - 3:00 p.m. Deft remanded to t/cust of USMS; [MBA EOD 04/09/2001] (ORIGINAL GCMS ENTRY 59-1) (cnv) (Entered: 04/09/2001)

04/09/2001	65	MINUTE ENTRY - Jury Trial, 1st Day - Jury voir dire begins. Jurors admonished. Trial cont'd to 04/25/01 - 10:00 a.m. Deft remanded to t/cust of USMS; [MBA EOD 04/09/2001] (ORIGINAL GCMS ENTRY 60-1) (cnv) (Entered: 04/09/2001)
04/09/2001	66	TRANSCRIPT Ord; [LRH EOD 04/10/2001] (ORIGINAL GCMS ENTRY 61-1) (cnv) (Entered: 04/09/2001)
04/10/2001	67	ORDER - P/T Conf mvd to Fri, 04/20/01 - 1:00 p.m.; [LRH EOD 04/10/2001] (ORIGINAL GCMS ENTRY 62-1) (cnv) (Entered: 04/10/2001)
04/16/2001	68	REPORTER'S Transc of t/fol: (orig only) 1. Ord To Show Cause Hrg, dtd Mon., 04/9/01; [LRH EOD 04/17/2001] (ORIGINAL GCMS ENTRY 63-1) (cnv) (Entered: 04/16/2001)
04/19/2001	69	UNITED States' Subm of Addtl Jencks Materials; [MBA EOD 04/19/2001] (ORIGINAL GCMS ENTRY 64-1) (cnv) (Entered: 04/19/2001)
04/20/2001	70	UNITED States' Suppl & Revised Exh; [LRH EOD 04/20/2001] (ORIGINAL GCMS ENTRY 65-1) (cnv) (Entered: 04/20/2001)
04/20/2001	71	MINUTE ENTRY - Pre-Trial Conference - Govt anticipates 4 days of trial. Interp to be made avail. Trial to resume on 04/25/01 - 10:00 a.m.; [LRH EOD 04/20/2001] (ORIGINAL GCMS ENTRY 66-1) (cnv) (Entered: 04/20/2001)
04/24/2001	72	UNITED States' Subm of Addtl Jencks Material; [LRH EOD 04/24/2001] (ORIGINAL GCMS ENTRY 67-1) (cnv) (Entered: 04/24/2001)
04/24/2001	73	UNITED States' Amd Exh List; [LRH EOD 04/25/2001] (ORIGINAL GCMS ENTRY 68-1) (cnv) (Entered: 04/24/2001)
04/25/2001	74	STIPULATION & Ord Regarding Prior Felony Conviction; [LRH EOD 04/25/2001] (ORIGINAL GCMS ENTRY 69-1) (cnv) (Entered: 04/25/2001)
04/25/2001	75	STIPULATION & Ord Regarding Adm of Evid; [LRH EOD 04/25/2001] (ORIGINAL GCMS ENTRY 70-1) (cnv) (Entered: 04/25/2001)
04/25/2001	76	MINUTE ENTRY - Jury Trial, 2nd Day - Jury impanelled & sworn. Jurors excused & instruc to rpt 04/26/01 - 9:30 a.m. Deft rem to cust of USMS; [MBA EOD 04/30/2001] (ORIGINAL GCMS ENTRY 71-1) (cnv) (Entered: 04/25/2001)
04/26/2001	77	MINUTE ENTRY - Jury Trial 3rd Day. Prelim instructions given. Witnesses and exhibits admitted. Jurors admonished and instructed to return 4/30/01 at 9 a.m. Deft. remanded to custody.; [PTC EOD 05/03/2001] (ORIGINAL GCMS ENTRY 71a-1) (cnv) (Entered: 04/26/2001)
04/30/2001	78	MINUTE ENTRY - Jury Trial Day 4. Witnesses and exhibits admitted. Trial contd to 5/1/01 at 9 a.m. Deft. remanded.; [PTC EOD 05/03/2001] (ORIGINAL GCMS ENTRY 71b-1) (cnv) (Entered: 04/30/2001)
05/01/2001	79	ORDER to Rel Info re Req to Rel P/T Svcs Rpt & Drug Testing Form; [LRH EOD 05/01/2001] (ORIGINAL GCMS ENTRY 72-1) (cnv) (Entered: 05/01/2001)
05/01/2001	80	MINUTE ENTRY - Jury Trial Day 5. Witnesses sworn and examined. Exhibits marked and admitted. Trial contd. to 5/2/01 at 9:00 a.m. Deft. remanded.; [PTC EOD 05/03/2001] (ORIGINAL GCMS ENTRY 72a-1) (cnv) (Entered: 05/01/2001)
05/02/2001	81	MOTION in Limine; [LRH EOD 05/02/2001] (ORIGINAL GCMS ENTRY 73-1) (cnv) (Entered: 05/02/2001)
05/02/2001	82	MOTION in Limine; Amd Cert of Svc; [LRH EOD 05/02/2001] (ORIGINAL GCMS ENTRY 74-1) (cnv) (Entered: 05/02/2001)
05/02/2001	83	PROPOSED Instruction; [LRH EOD 05/02/2001] (ORIGINAL GCMS ENTRY 75-1) (cnv) (Entered: 05/02/2001)

05/02/2001	84	UNITED States' Amd Proposed Verdict Form; [LRH EOD 05/02/2001] (ORIGINAL GCMS ENTRY 76-1) (cnv) (Entered: 05/02/2001)
05/02/2001	85	DEFENDANT'S Proposed Jury Instructions; Oppo to Various Govt Instructions; Cert of Svc; [LRH EOD 05/02/2001] (ORIGINAL GCMS ENTRY 77-1) (cnv) (Entered: 05/02/2001)
05/02/2001	86	MINUTE ENTRY - Jury Trial Day 6. Witness sworn and examined. Exhibits marked and admitted. Trial contd. to 5/3/01 at 10AM. Deft. remanded.; [PTC EOD 05/03/2001] (ORIGINAL GCMS ENTRY 78-1) (cnv) (Entered: 05/02/2001)
05/03/2001	87	JURY Instructions as Given by t/Crt; [LRH EOD 05/04/2001] (ORIGINAL GCMS ENTRY 79-1) (cnv) (Entered: 05/03/2001)
05/03/2001	88	MINUTE ENTRY - Jury Trial Day 7 - Mtn for judgt of acquittal - Denied. Cs contd to 05/04/01 - 9:00 a.m. Jury retires to deliberate at 3:37 p.m. Jury deliberation contd to 05/04/01 - Jury will be polled. Deft rem to cust ; [LRH EOD 05/04/2001] (ORIGINAL GCMS ENTRY 80-1) (cnv) (Entered: 05/03/2001)
05/03/2001	89	JUROR'S Notes; [LRH EOD 05/04/2001] (ORIGINAL GCMS ENTRY 81-1) (cnv) (Entered: 05/03/2001)
05/04/2001	90	MINUTE ENTRY - Jury Trial (re Jury Question) - Ernesto Peredo explains to Crt & cnsl what happened during phone call recd. Mr. E. Peredo excused. Pilar Concepcion brought in room & questioned re conversation w/ E. Peredo. Pilar Concepcion excused. 10:05 a.m. - 10:24 a.m. recess; [LRH EOD 05/08/2001] (ORIGINAL GCMS ENTRY 82-1) (cnv) (Entered: 05/04/2001)
05/04/2001	91	JUROR'S Notes; [LRH EOD 05/08/2001] (ORIGINAL GCMS ENTRY 83-1) (cnv) (Entered: 05/04/2001)
05/04/2001	92	JUROR'S Notes; [LRH EOD 05/08/2001] (ORIGINAL GCMS ENTRY 84-1) (cnv) (Entered: 05/04/2001)
05/04/2001	93	JUROR'S Notes; [LRH EOD 05/08/2001] (ORIGINAL GCMS ENTRY 85-1) (cnv) (Entered: 05/04/2001)
05/04/2001	94	JUROR'S Notes; [LRH EOD 05/08/2001] (ORIGINAL GCMS ENTRY 86-1) (cnv) (Entered: 05/04/2001)
05/07/2001	95	JUROR'S Notes; [LRH EOD 05/08/2001] (ORIGINAL GCMS ENTRY 87-1) (cnv) (Entered: 05/07/2001)
05/07/2001	96	VERDICT; [LRH EOD 05/08/2001] (ORIGINAL GCMS ENTRY 88-1) (cnv) (Entered: 05/07/2001)
05/07/2001	97	MINUTE ENTRY - Jury Trial Day 8 - Jry returns at 2:30 p.m. - Deft Guilty on cts 1-6; Jry polled. Deft rem to cust. Case contd to 08/23/01 - 1:30 p.m. for sent; PSR due 07/20/01.; [LRH EOD 05/08/2001] (ORIGINAL GCMS ENTRY 89-1) (cnv) (Entered: 05/07/2001)
05/08/2001	98	ABSTRACT of Ord for USPO; [LRH EOD 05/08/2001] (ORIGINAL GCMS ENTRY 90-1) (cnv) (Entered: 05/08/2001)
08/02/2001	99	DEFENDANT'S Resp to PSI Rpt; [LRH EOD 08/03/2001] (ORIGINAL GCMS ENTRY 91-1) (cnv) (Entered: 08/02/2001)
08/07/2001	100	ORDER - Sent mvd to Thurs., 08/30/01 - 1:30 p.m.; [LRH EOD 08/17/2001] (ORIGINAL GCMS ENTRY 91A-1) (cnv) (Entered: 08/07/2001)
08/09/2001	101	ORDER - Sent mvd to Thurs., 08/30/01 - 1:30 p.m.; [LRH EOD 08/09/2001] (ORIGINAL GCMS ENTRY 92-1) (cnv) (Entered: 08/09/2001)
08/10/2001	102	GOVERNMENT'S Resp to Draft PSI Rpt; [LRH EOD 08/10/2001] (ORIGINAL

		GCMS ENTRY 93-1) (cnv) (Entered: 08/10/2001)
08/10/2001	103	GOVERNMENT'S Resp to Deft's Obj to PSI Rpt; [LRH EOD 08/10/2001] (ORIGINAL GCMS ENTRY 94-1) (cnv) (Entered: 08/10/2001)
08/22/2001	104	ORDER - due to the scheduling needs of the court, the 08/30/01 sentencing hrg is hereby moved to 9/6/01 at 4 p.m.; Filed by: GOVPTF U.S.A. [LRH EOD 08/22/2001] (ORIGINAL GCMS ENTRY 95-1) (cnv) (Entered: 08/22/2001)
08/28/2001	105	DEFENDANT'S Resp to Addendum to PSR; [MBA EOD 08/28/2001] (ORIGINAL GCMS ENTRY 96-1) (cnv) (Entered: 08/28/2001)
09/06/2001	106	DEFENDANT'S Supp Sent Brief; [LRH EOD 09/07/2001] (ORIGINAL GCMS ENTRY 97-1) (cnv) (Entered: 09/06/2001)
09/07/2001	107	STIPULATION to Cont Sent Hrg; & Ord - Sent contd to 09/13/01 - 4:00 p.m.; [LRH EOD 09/07/2001] (ORIGINAL GCMS ENTRY 98-1) (cnv) (Entered: 09/07/2001)
09/11/2001	108	GOVERNMENT'S Resp to Deft's Supplmtl Sent Brf; [MBA EOD 09/11/2001] (ORIGINAL GCMS ENTRY 99-1) (cnv) (Entered: 09/11/2001)
09/13/2001	109	ORDER - Sent mvd to 09/14/01 - 9:00 a.m.; [WMT EOD 09/13/2001] (ORIGINAL GCMS ENTRY 100-1) (cnv) (Entered: 09/13/2001)
09/17/2001	110	ORDER - Sent moved to 10/09/01 - 1:30 p.m. Cnsl shall file, NLT 09/24/01, further brfng on t/implications of recent 9th Cir decision. Resp brfds may be submitted NLT 10/01/01; [MBA EOD 09/17/2001] (ORIGINAL GCMS ENTRY 101-1) (cnv) (Entered: 09/17/2001)
09/20/2001	111	GOERNMENT'S Add'l Resp to Deft's Supplmtl Sent Brf; [MBA EOD 09/20/2001] (ORIGINAL GCMS ENTRY 102-1) (cnv) (Entered: 09/20/2001)
09/24/2001	112	DEFENDANT'S Add'l Sent Brf re Apprendi & Buckland Iss; [MBA EOD 09/24/2001] (ORIGINAL GCMS ENTRY 103-1) (cnv) (Entered: 09/24/2001)
10/09/2001	113	STIPULATION & Ord re Sent - DENIED; [MBA EOD 10/10/2001] (ORIGINAL GCMS ENTRY 104-1) (cnv) (Entered: 10/09/2001)
10/09/2001	114	MINUTE ENTRY - Sentencing - Deft sent to 365 mos. impris to run concurrent to Cts 1 thru 6; Ct 1 - 5 yrs, Ct 2 - 5 yrs, Ct 3 - 5 yrs, Ct 4 - 1 yr, Ct 5 - 3 yrs, Ct 6 - 3 yrs suprvd rel (to run concurrent); 400 hrs. community svcs; \$600.00 SA; fine waived. Deft ord rem for immediate incarceration; [MBA EOD 10/15/2001] (ORIGINAL GCMS ENTRY 104A-1) (cnv) (Entered: 10/09/2001)
10/12/2001	115	MOTION for Withdrawal as Cnsl - Jehan'Ad Martinez withdraw as cnsl for deft. Rawlen M. Mantanona apptd to rep t/deft for appl purposes; [MBA EOD 10/15/2001] (ORIGINAL GCMS ENTRY 105-1) (cnv) (Entered: 10/12/2001)
10/19/2001	116	NOTICE of Mtn; [MBA EOD 10/19/2001] (ORIGINAL GCMS ENTRY 106-1) (cnv) (Entered: 10/19/2001)
10/19/2001	117	MOTION to Withdraw as Cnsl for Deft on Appl - Sandra Lynch apptd to rep t/deft; [MBA EOD 10/19/2001] (ORIGINAL GCMS ENTRY 106-2) (cnv) (Entered: 10/19/2001)
10/22/2001	118	JUDGMENT in a Cr Cs; [MBA EOD 10/22/2001] (ORIGINAL GCMS ENTRY 107-1) (cnv) (Entered: 10/22/2001)
11/07/2001	119	NOTICE of Appeal; Filed by: DFT Dela Pena, Isagani P., Jr. [PTC EOD 11/08/2001] (ORIGINAL GCMS ENTRY 108-1) (cnv) (Entered: 11/07/2001)
11/19/2001	120	NOTICE of Lien for Fine and/or Restit; [MBA EOD 11/19/2001] (ORIGINAL GCMS ENTRY 109-1) (cnv) (Entered: 11/19/2001)

11/28/2001	121	TRANSCRIPT Ord; [MBA EOD 11/28/2001] (ORIGINAL GCMS ENTRY 110-1) (cnv) (Entered: 11/28/2001)
12/03/2001	122	MOTION to Extend Time for Flg Not of Appl; [MBA EOD 12/03/2001] (ORIGINAL GCMS ENTRY 111-1) (cnv) (Entered: 12/03/2001)
12/03/2001	123	DECLARATION of Cnsl in Supt of Mtn to Extend Time for Flg of Not of Appl; [MBA EOD 12/03/2001] (ORIGINAL GCMS ENTRY 112-1) (cnv) (Entered: 12/03/2001)
12/03/2001	124	AFFIDAVIT of Noel V. Leon Guerrero; [MBA EOD 12/03/2001] (ORIGINAL GCMS ENTRY 113-1) (cnv) (Entered: 12/03/2001)
12/03/2001	125	AFFIDAVIT of Jay Anderson; [MBA EOD 12/03/2001] (ORIGINAL GCMS ENTRY 114-1) (cnv) (Entered: 12/03/2001)
12/10/2001	126	ORDER - Deft's Mtn to Extend Time for Flg Ntc of Appeal fld on 12/3/01. Deft Appealed his conviction & sent to t/Ninth Circuit of Appeals. Crt must Dism t/deft's mtn at this time on t/basis that this crt lacks jurisdiction over t/matter; [WMT EOD 12/10/2001] (ORIGINAL GCMS ENTRY 115-1) (cnv) (Entered: 12/10/2001)
02/11/2002	127	ORDER from t/Crt of Appeals - CA#01-10671 - Cs is rem to t/Dist Crt, pursuant to circuit crt policy, for t/td purpose of permitting t/dist crt to provide appellant ntc & an opportunity to req that t/time for flg t/ntc of appeal be extended for a period not to exceed 40 days from t/entry of t/appellable judgt or ord based on a showing of excusable neglect; [RMM EOD 02/12/2002] (ORIGINAL GCMS ENTRY 116-1) (cnv) (Entered: 02/11/2002)
02/14/2002	128	ORDER - This matter is before t/Crt on a mandate from 9th Cir Ct rem t/case back in ord to provide t/deft not & an opportunity to reqt that t/time for flg t/not of appl be extended for a period not to exceed 40 days frm the entry of t/appl judgt based on a showing of excusable neglect. Accordingly, t/deft shall file such a reqt NLT 02/21/02. T/Govt shall file a resp to t/reqt NLT 02/22/02. Thereafter, t/Crt will issue its findings w/o further hrg; [MBA EOD 02/14/2002] (ORIGINAL GCMS ENTRY 117-1) (cnv) (Entered: 02/14/2002)
02/14/2002	129	REPORTER'S Transc of t/fol: (orig + 1 cpy) 1. Mtns., dtd Thurs., 02/22/01 2. OSC, dtd Mon., 04/09/01 3. Trial - Jury Selection, dtd Mon., 04/09/01 & 04/25/01 - Vol 1 4. Trial, dtd 04/26/01 - Vol 2 5. Trial, dtd 04/30/01 - Vol 3; [MBA EOD 02/14/2002] (ORIGINAL GCMS ENTRY 118-1) (cnv) (Entered: 02/14/2002)
02/20/2002	130	MOTION to Extend time for Filing Not of Appl; [MBA EOD 02/21/2002] (ORIGINAL GCMS ENTRY 119-1) (cnv) (Entered: 02/20/2002)
02/22/2002	131	GOVERNMENT'S Oppo to Deft's Mtn to Ext Time for Flg Not of Appl; [MBA EOD 02/22/2002] (ORIGINAL GCMS ENTRY 120-1) (cnv) (Entered: 02/22/2002)
02/25/2002	132	REPLY to Oppo to Mtn to Ext Time for Flg of Ntc of Appl; [MBA EOD 02/25/2002] (ORIGINAL GCMS ENTRY 121-1) (cnv) (Entered: 02/25/2002)
02/28/2002	133	ORDER - T/Crt finds t/existence of excusable neglect for t/Deft's untimely Ntc of Appl. Accordingly, t/Deft's Mtn to Extend Time for Filing t/Ntc of Appl is hereby GRANTED; [MBA EOD 02/28/2002] (ORIGINAL GCMS ENTRY 122-1) (cnv) (Entered: 02/28/2002)
03/29/2002	134	REPORTER'S Transc(s) of t/fol: (orig + 1 cpy) 1. Trial Transcript, dtd Tues., 05/01/01 - Vol 4 2. Trial Transcript, dtd Wed., 05/02/01 - Vol 5 3. Trial Transcript, dtd Thurs., 05/03/01; Fri., 05/04/01; Mon, 05/07/01 4. Sent Hrg., Tues., 10/09/01; [MBA EOD 03/29/2002] (ORIGINAL GCMS ENTRY 123-1) (cnv) (Entered: 03/29/2002)
07/23/2002	135	ACKNOWLEDGEMENT of Receipt of Exhs; [MBA EOD 07/23/2002] (ORIGINAL GCMS ENTRY 124-1) (cnv) (Entered: 07/23/2002)
03/25/2003	136	MANDATE fm 9th Cir Crt - AFFIRMED; [MBA EOD 03/25/2003] (ORIGINAL

		GCMS ENTRY 125-1) (cnv) (Entered: 03/25/2003)
11/21/2003	137	TRANSCRIPT Ord; [MBA EOD 11/21/2003] (ORIGINAL GCMS ENTRY 126-1) (cnv) (Entered: 11/21/2003)
01/23/2004	138	MOTION Under 28 USC 2255 Motion to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody; [MBA EOD 01/23/2004] (ORIGINAL GCMS ENTRY 127-1) (cnv) (Entered: 01/23/2004)
02/06/2004	139	REPORTER'S Transc of t/fol: (orig only) 1. Opening & Closing Stmt, 04/26/01 & 05/03/01; [LRH EOD 02/08/2004] (ORIGINAL GCMS ENTRY 128-1) (cnv) (Entered: 02/06/2004)
02/06/2004	140	ORDER - t/Crt is in rcpt of Deft-Petr Isagani Dela Pena Jr's mtn for relief under 28 USC 2255. T/Govt shall have until 03/05/04, in which to file a resp to t/mtn. If a resp is recd, t/Petr shall have 30 days from receipt of t/ U.S. resp in which to file a reply. If t/Crt finds that a hrg is necessary on Petr 2255 mtn, a hrg date will be set at a later date.; [LRH EOD 02/08/2004] (ORIGINAL GCMS ENTRY 129-1) (cnv) (Entered: 02/06/2004)
03/04/2004	141	TRANSCRIPT - Order ; [RSN EOD 03/04/2004] (ORIGINAL GCMS ENTRY 130-1) (cnv) (Entered: 03/04/2004)
03/05/2004	142	UNITED States' Mtn for Extension of Time to File Response to Deft's Mtn to Vacate, Set Aside, or Correct Sent & Ord - U.S.A may have until 03/19/04 in which to file an answer to Deft-Petitioner's 2255 mtn; [MBA EOD 03/08/2004] (ORIGINAL GCMS ENTRY 131-1) (cnv) (Entered: 03/05/2004)
03/12/2004	143	MEMORANDUM of Law in Support of Mtn to Vacate, Set Aside, or Correct Sent Pursuant to 28 USC 2255; [MBA EOD 03/12/2004] (ORIGINAL GCMS ENTRY 132-1) (cnv) (Entered: 03/12/2004)
03/23/2004	144	UNITED States' Second Mtn for Extension of Time to File Response to Deft's Mtn to Vacate, Set Aside, or Correct Sent & Ord - U.S. may have until 04/12/04 to file an answer to Deft-Petitioner's 2255 mtn; [MBA EOD 03/24/2004] (ORIGINAL GCMS ENTRY 133-1) (cnv) (Entered: 03/23/2004)
03/25/2004	145	GOVERNMENT'S Response to Deft's Mtn to Vacate, Set Aside, or Correct Sent; [MBA EOD 03/25/2004] (ORIGINAL GCMS ENTRY 134-1) (cnv) (Entered: 03/25/2004)
05/04/2004	146	DEFENDANT'S Traverse to Government's Response to Defendant's Motion to Vacate, Set Aside, or Correct Sentence; [MBA EOD 04/25/2005] (ORIGINAL GCMS ENTRY 135-1) (cnv) (Entered: 05/04/2004)
07/07/2005	147	ORDER re Motion to Vacate, Set Aside or Correct Sentence by a Person in a Federal Custody pursuant to 28 USC 2255. After considering all the submissions, the Court DENIES defendant's motion in its entirety; [MBA EOD 07/07/2005] (ORIGINAL GCMS ENTRY 136-1) (cnv) (Entered: 07/07/2005)
08/15/2005	148	Notice of Appeal; Motion for Certificate of Appealability filed by Isagani P. Dela Pena, Jr. re [147] Order Denying 2255 Motion (mba,) Modified on 8/16/2005 (rsn,). (Entered: 08/16/2005)
08/15/2005	149	Certificate of Service as to Isagani P. Dela Pena, Jr. re 148 Notice of Appeal, Motion for Certificate of Appealability (mba,) (Entered: 08/16/2005)
03/23/2006	150	Motion for Accelerated Adjudication of Motion for Certificate of Appealability re 148 Notice of Appeal; Motion for Certificate of Appealability by Isagani P. Dela Pena, JR. (lth,) (Entered: 03/23/2006)
03/28/2006	151	Certificate of Service as to Isagani P. Dela Pena, Jr. re 150 Motion for Accelerated Adjudication of Motion for Certificate of Appealability (mba,) (Entered: 03/28/2006)

03/31/2006	<u>152</u>	Order denying <u>150</u> Motion for Accelerated Adjudication of Motion for Certificate of Appealability as to Isagani P. Dela Pena Jr (Related document: <u>148</u> Notice of Appeal). (1). Signed by Judge Robert M. Takasugi on 3/30/2006. (mba,) **Modified on 3/31/2006 to add docket relationship** (mba,). (Entered: 03/31/2006)
03/31/2006	<u>153</u>	Notice of Entry re <u>152</u> Order denying <u>150</u> Motion for Accelerated Adjudication of Motion for Certificate of Appealability (Related document: <u>148</u> Notice of Appeal). (mba,) (Entered: 03/31/2006)
04/04/2006	<u>154</u>	Certificate of Service re <u>153</u> Notice of Entry, <u>152</u> Order denying <u>150</u> Motion for Accelerated Adjudication of Motion for Certificate of Appealability as to Isagani P. Dela Pena, Jr.. (Related document: <u>148</u> Notice of Appeal). (mba,) (Entered: 04/04/2006)
10/10/2006	<u>155</u>	Order of USCA (certified copy) as to Isagani P. Dela Pena, Jr re <u>148</u> Notice of Appeal. The request for a certificate of appealability is denied.(mba,) (Entered: 10/23/2006)
10/23/2006	<u>156</u>	Amended Order of USCA (certified copy) as to Isagani P. Dela Pena, Jr. (Related documents: <u>155</u> Order of USCA (certified copy), <u>148</u> Notice of Appeal).(mba,) (Entered: 10/23/2006)
10/23/2006		Ninth Circuit Court of Appeals amended their order to include the criminal case number as to Isagani P. Dela Pena, Jr. (mba,) (Entered: 10/23/2006)
10/24/2006		Court Certificate of Service as to Isagani P. Dela Pena, JR re <u>155</u> USCA Order, <u>156</u> Amended USCA Order - USAO acknowledged receipt on 10/24/2006. (mba,) (Entered: 10/24/2006)
10/24/2006	<u>157</u>	Certificate of Service as to Isagani P. Dela Pena, JR re <u>155</u> USCA Order, <u>156</u> Amended USCA Order. (mba,) (Entered: 10/24/2006)
01/11/2007	<u>158</u>	Certificate of Release of Lien filed by USA as to Isagani P. Dela Pena, Jr. (vtk,) (Entered: 01/11/2007)

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CERTIFICATE OF SERVICE

I, ALEX SILVERIO, declare:

That I am a citizen of the United States and resident or employed in Los Angeles County, California; that my business address is the Office of United States Attorney, United States Courthouse, 312 North Spring Street, Los Angeles, California 90012; that I am over the age of eighteen years, and am not a party to the above-entitled action;

That I am employed by the United States Attorney for the Central District of California who is a member of the Bar of the United States District Court for the Central District of California; at whose direction I served a copy of: **GOVERNMENT'S MOTION TO DISMISS PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 USC § 2241; DECLARATION OF ERIC D. VANDEVELDE; EXHIBITS**

[] Placed in a closed envelope, for collection and interoffice delivery addressed as follows:

[X] Placed in a sealed envelope for collection and mailing via United States Mail, addressed as follows:

[] By hand delivery
addressed as follows:

[] By facsimile as follows:

[] By messenger as follows: [] By federal express as follows:

ISAGANI DE LA PENA
REG. NO. 00944-093
FCI VICTORVILLE MEDIUM I
FEDERAL CORRECTIONAL INSTITUTION
P.O. BOX 5300
ADELANTO, CA 92301

This Certificate is executed on **JANUARY 16, 2008**, at Los Angeles, California.

I certify under penalty of perjury that the foregoing is true and correct.


ALEX SILVERIO